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10/710,349	07/02/2004	Lori Amthor Fulks	LF01	4348
27797	7590	08/17/2006	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			COLLADO, CYNTHIA FRANCISCA	
			ART UNIT	PAPER NUMBER
			3618	

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/710,349  
Filing Date: July 02, 2004  
Appellant(s): FULKS, LORI AMTHOR

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Richard D. Fuerle  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 21, 2006 appealing from the Office action mailed May 3, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6312048	Kilmer	11/6/2001
4290643	Logan	9/22/1981

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6,9-10,14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan (US Patent No.4, 290,643) in view of Kilmer (US Patent No.6, 312,048).

**(10) Response to Argument**

Appellant argues that Logan does not teach an armrest on each side of the seat, however examiner does not concede because it's recognizable that element 23 can be used to support an arm and therefore one can rest one's arms on the top edge of element 23.

Appellant argues that Logan does not teach flexible material that prevents objects placed on the seat from falling off when the chair is pulled, however examiner does not agree with the appellant for the reason that Logan's flexible material is capable of performing the exact same process as the applicants collapsible chair, for example one can place a sweater on the chair, then close it and haul the chair away with the sweater in between the collapsed chair.

Appellant argues that the Logan reference does not teach a seat, a back and arm rest as separate elements, however examiner disagrees with applicant in which the seat

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(fig 1, element 1), a flexible back (fig 1, element 22) and an armrest on each side (fig 1, element 23) are all separated by compression members viewed in figure 1 and discussed in column 2, lines 8-68.

In response to applicant's argument that it would not be obvious to modify "Logans chair to include a handle and wheels behind the rear legs as in Kilmer", the references must explicitly provide a suggestion for combining, a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference (see *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)), with skill being presumed on the part of the artisan, rather than the lack thereof (see *In re Sovish* 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985)); further, references may be combined although none of them explicitly suggests combining one with the other (see *In re Nilssen* 7 USPQ2d 1500 (Fed. Cir. 1989)). It has long been the law that the motivation to combine need not be found in prior art references, but equally can be found "in the knowledge generally available to one of ordinary skill in the art." *In re Jones*, 958 F.2d 347, 351 (Fed. Cir. 1992) (Citing *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988)).

The motivation to combine can be found either in a prior art reference, or it can be implicit in the knowledge of one of ordinary skill in the art. See *In re Huston*, 308 F.3d 1267, 1280 (Fed. Cir. 2002); *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472 (Fed. Cir. 1997).

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Sources suggesting a combination may be: (1) the combined teachings of the prior art, (2) the knowledge of the ordinary practitioner and (3) the nature of the problem to be solved. "The test for implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed.Cir. 2000).

In Richard Ruiz and Foundation Anchoring Systems, Inc. v. A.B. Chance Company, No. 03-1333 (Fed. Cir. January 29, 2004), the court emphasized that an "express written teaching in the art" to combine references was not required [emphasis added]. Rather, motivation may come from "the nature of a problem to be solved, leading inventors to look to references relating to possible solutions to that problem."

Please further note the following from Section 2144 of the MPEP: "The rationale to modify or combine the prior art does not have to be expressly stated in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent...The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem...It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by Applicant." Also Chief Judge Nies writes in a concurring opinion, "While there must be some teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed device, it is not necessary that the cited references or the prior art

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specifically suggest making the combination...In sum, it is off the mark for litigants to argue, as many do, that an invention cannot be held to have been obvious unless a suggestion to combine prior art teachings is found in a specific reference". See *In re Oetiker* 977 F.2d 1443, 24 USPQ.2d 1443 (Fed.Cir.1992).

Appellant argues that Logan does not teach a lock for securing the chair in fig 2, element 13, however examiner disagrees with applicant. Examiner interprets element 13 to serve as a locking device for the reason that it maintains the chair opened in a locked position hence serves as a lock.

Furthermore in regards to Kilmer, applicant argues that figure 1b, element 40 and 41 is not a lock, its considered a bungee cord, however examiner disagrees with applicant because the bungee cord in the Kilmer reference serves as a locking mechanism. Examiner directs applicant to figure 1b, elements 40 and 41 in where the collapsible chair is being held closed by the bungee cord hence serves as a lock. Examiner also directs applicant to column 4, lines 20-34.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully Submitted,

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